

1 CHRISTOPHER M. KELLER, ESQ.
2 PYATT SILVESTRI & HANLON
3 701 Bridger Ave., Suite 600
4 Las Vegas, Nevada 89101
(702) 383-6000
5 Attorneys for Defendant
6 ALLSTATE FIRE AND CASUALTY
7 INSURANCE COMPANY

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10 UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF NEVADA
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17 NENAD TRGOVCEVIC and BORIS,)
18 TRGOVCEVIC,) CASE NO.: 2:11-cv-00730-RCJ-PAL
19 Plaintiffs,)
20 vs.)
21 ALLSTATE FIRE AND CASUALTY)
22 INSURANCE COMPANY,)
23 Defendant.)
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18 **ANSWER**
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DATE OF HEARING: N/A
TIME OF HEARING: N/A

25 COMES NOW Defendant, ALLSTATE FIRE AND CASUALTY INSURANCE
26 COMPANY, by and through its attorneys, CHRISTOPHER M. KELLER, ESQ., of the law
27 offices of PYATT SILVESTRI & HANLON, and in response to Plaintiffs' Complaint on file
28 herein, admits, denies and alleges:

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

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26 1. Answering Paragraphs 1 and 3 of Plaintiffs' Complaint, Defendant is without
27 sufficient knowledge to form a belief as to the truth or falsity of the allegations contained therein
28 and, therefore, denies the same.

2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendant admits each and every allegation contained therein.

3. Answering Paragraphs 4 and 5 of Plaintiffs' Complaint, Defendant states that the allegations contained therein constitute conclusions of law and thus require no answer, however, to the extent that they contain allegations of fact, Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations, and, therefore, denies the same.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT FOR
UNDERINSURED MOTORIST BENEFITS

4. Answering Paragraph 6 of the First Claim of Action of Plaintiffs' Complaint, Defendant repeats, realleges and incorporates herein by reference as though fully set forth at this point, its answers to Paragraphs 1 through 5 of the Allegations Common to All Claims for Relief of Plaintiffs' Complaint on file herein.

5. Answering Paragraphs 7, 9, 12, and 15 of Plaintiffs' Complaint, Defendant admits each and every allegation contained therein.

6. Answering Paragraph 8 of Plaintiffs' Complaint, Defendant states that the allegations contained therein constitute conclusions of law and thus require no answer, however, to the extent that they contain allegations of fact, Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations, and, therefore, denies the same.

7. Answering Paragraph 10 of Plaintiffs' Complaint, Defendant admits "that Plaintiffs, NENAD and BORIS' damages including physical and emotion injuries, wage loss, loss of earning capacity, and general pain and suffering, exceed the \$25,000.00 provided to NENAD, and the \$25,000.00 provided to BORIS by the tortfeasor's insurance policy", and as to the remaining allegation of "far". Defendant denies the same.

8. Answering Paragraph 11 of Plaintiffs' Complaint, Defendant admits "that prior to April 9, 2010, the Defendant, ALLSTATE, issued a policy of automobile insurance, policy number 944 988381, to Plaintiff NENAD. Said policy of insurance was in full force and effect

1 on April 9, 2010, and as to the remaining allegation contained therein, Defendant denies the
 2 same.

3 9. Answering Paragraph 13 of the Plaintiffs' Complaint, Defendant admits the same
 4 pursuant to the subject of the policy terms and conditions.

5 10. Answering Paragraphs 14, 16 and 17 of the First Claim for Relief of Plaintiffs'
 6 Complaint, Defendant denies each and every allegation contained therein.

7 **SECOND CLAIM FOR RELIEF**
COMMON LAW BAD FAITH

8 11. Answering Paragraph 18 of the Second Claim for Relief of Plaintiffs' Complaint,
 9 Defendant repeats, realleges and incorporates herein by reference as though fully set forth at this
 10 point, its answers to Paragraphs 1 through 10 of Plaintiffs' Complaint on file herein.

11 12. Answering Paragraph 18 of the Second Claim for Relief of Plaintiffs' Complaint,
 12 Defendant states that the allegations contained therein constitute conclusions of law and thus
 13 require no answer, however, to the extent that they contain allegations of fact, Defendant is
 14 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
 15 said allegations, and, therefore, denies the same.

16 13. Answering Paragraphs 20, 21, 22 and 23 of Plaintiffs' Complaint, Defendant
 17 denies each and every allegation contained therein.

18 **THIRD CLAIM FOR RELIEF**
STATUTORY BAD FAITH

19 20 14. Answering Paragraph 24 of the Third Claim for Relief of Plaintiffs' Complaint,
 21 Defendant repeats, realleges and incorporates herein by reference as though fully set forth at this
 22 point, its answers to Paragraphs 1 through 23 of Plaintiffs' Complaint on file herein.

23 15. Answering Paragraphs 25 and 27 of Plaintiffs' Complaint, Defendant admits each
 24 and every allegation contained therein.

25 16. Answering Paragraphs 26, 28, 29, 30 and 31 of Plaintiffs' Complaint, Defendant
 26 denies each and every allegation contained therein.

27 **FIRST AFFIRMATIVE DEFENSE**

28 Plaintiff herein failed to mitigate his damages, if any.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that the damages, if any suffered by Plaintiff were caused in whole or in part, or were contributed to by reason of the negligence of the Plaintiff.

THIRD AFFIRMATIVE DEFENSE

Defendant alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any resulting therefrom, were caused by the acts or omissions of a third party over whom Defendant had no control.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for breach of the covenant of good faith and fair dealing and/or "bad faith," and all damages allegedly arising therefrom, are barred based on Allstate's reliance on a good-faith investigation of Plaintiffs' claim.

FIFTH AFFIRMATIVE DEFENSE

Nevada Revised Statute section 42.005 allowing open-ended extra-contractual and punitive damages for certain tort claims, if either is applicable herein as to Plaintiffs' claims, are invalid on their face and as applied to Allstate as violating the protections afforded it under the Eighth and Fourteenth Amendments of the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

Defendant is entitled to an offset for any monies or benefits Plaintiff receives from any other insurer, party or named defendant.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and therefore, Defendants reserve the right to amend their Answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by way of his Complaint on file herein;
2. For reasonable attorney's fees and costs to defend this action; and
3. For such other and further relief as to the court may deem meet and proper in the

1 premises.

2 DATED this 16 day of May, 2011.

3 PYATT SILVESTRI & HANLON

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5 CHRISTOPHER M. KELLER, ESQ.
6 701 Bridger Avenue, Suite 600
7 Las Vegas, NV 89101
8 Attorneys for Defendant

9 **DEMAND FOR JURY TRIAL**

10 COMES NOW the Defendant, and hereby demands a jury trial of all of the issues in the
11 above matter.

12 DATED this 16 day of May, 2011.

13 PYATT SILVESTRI & HANLON

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15 CHRISTOPHER M. KELLER, ESQ.
16 701 Bridger Avenue, Suite 600
17 Las Vegas, Nevada 89101
18 Attorneys for Defendant

19 **CERTIFICATE OF MAILING**

20 I hereby certify that service of the foregoing **ANSWER AND DEMAND FOR JURY**
21 **TRIAL** was made on this 18 day of May, 2011, by depositing a true and correct copy of the
22 same, in the United States Mail, Las Vegas, Nevada, with postage fully prepaid thereon,
23 addressed to the following:

24 ROBERT L. AMICK, ESQ.
25 AMICK LAW OFFICE
26 6030 S. Rainbow Blvd., Ste. D-1
27 Las Vegas, Nevada 89118
28 Attorneys for Plaintiffs

Janet Wakayama
An Employee of the Firm